

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 10-0100

DANIEL L. CASEY,

Plaintiff and Appellee,

v.

FILED

JUN 10 2010

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

PACIFIC NORTHWEST REGIONAL COUNCIL OF CARPENTERS

Defendant and Appellee

MOTION TO DISMISS APPEAL

COMES NOW Pacific Northwest Regional Council of Carpenters, Defendant/Appellee, by and through counsel, and moves the Court to dismiss the appeal of Daniel L. Casey, Plaintiff/Appellant.

Mr. Casey's Opening Brief was due on May 13, 2010. At no point did Mr. Casey ask for an extension. To date, Mr. Casey has filed neither an opening brief nor a request for an extension to time in which to file his opening brief.

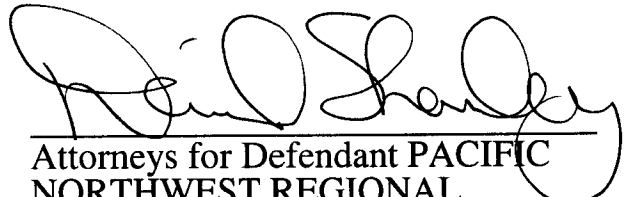
According to Rule 13(3) of the Montana Rules of Appellate Procedure, "If an appellant fails to file a brief within the time provided by this rule, or within any extended time, an appellee may move for dismissal of the appeal." Dismissal of Mr. Casey's appeal is therefore appropriate.

While Counsel for Mr. Casey filed a Notice of Withdrawal of Counsel with

the Montana First Judicial District Court, Lewis and Clark County, no Notice of Withdrawal of Counsel has been filed with the Supreme Court. As such, before filing this Motion to Dismiss Appeal, counsel for the Pacific Northwest Regional Council of Carpenters attempted to contact counsel of record for Mr. Casey pursuant to Rule 16(1) of the Montana Rules of Appellate Procedure. Counsel for Mr. Casey has not responded to the voice mail indicating that the Pacific Northwest Regional Council of Carpenters would move to dismiss Mr. Casey's Appeal. Chen Affidavit ¶¶ 2-9.

Based on the foregoing, the Pacific Northwest Regional Council of Carpenters respectfully request that this Court dismiss Mr. Casey's appeal.

Dated this 9 day of June, 2010:



Attorneys for Defendant PACIFIC
NORTHWEST REGIONAL
COUNCIL OF CARPENTERS

CERTIFICATE OF SERVICE

I hereby certify that the herein MOTION TO DISMISS APPEAL was duly served upon the following by: [☒] U.S. First Class Mail; [☐] Express Mail (or overnight service); [☐] Hand Delivery; or [☐] Facsimile Transmission:

Monica Trannel
LUXAN & MURFITT, PLLP
Fourth Floor, Montana Club Building
P.O. Box 1144
Helena, MT 59624

Dated this 9th day of June, 2010

Nelly Caywood

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 10-0100

DANIEL L. CASEY,

Plaintiff and Appellee,

y.

FILE

JUN 10 2010

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

PACIFIC NORTHWEST REGIONAL COUNCIL OF CARPENTERS

Defendant and Appellee

AFFIDAVIT OF ALICE CHIH-MEI CHEN

State of California)
County of Los Angeles)
SS)

ALICE CHIH-MEI CHEN, after being duly sworn, deposes and says as follows:

1. DeCarlo, Connor & Shanley, through Daniel M. Shanley (appearing *pro hac vice*), represents the Pacific Northwest Regional Council of Carpenters, Defendant/Appellee, in this matter. I am an attorney licensed to practice before all courts in the State of California and Nevada, the United States District Court, Central and Northern Districts of California and Nevada. I am an attorney with DeCarlo, Connor & Shanley.

2. On or about May 3, 2010, I received a Notice of Withdrawal of Counsel from Monica J. Tranel of Luxan & Murfitt, PLLP dated April 29, 2010 along with a Consent of Withdrawal of Counsel signed by Daniel L. Casey, the Plaintiff/Appellant, dated April 28, 2010. Both were filed with the Montana First Judicial District Court, Lewis and Clark County.
3. The Notice of Withdrawal of Counsel apparently was not filed with the Montana Supreme Court.
4. Mr. Casey's Opening Brief was due on May 13, 2010.
5. Mr. Casey did not file an Opening Brief on May 13, 2010 or at any point thereafter.
6. Mr. Casey never asked for an extension for filing his Opening Brief at any time before May 13, 2010.
7. On May 18, 2010, I called the Montana Supreme Court clerk's office to inquire as to whether the Notice of Withdrawal of Counsel had been filed with the Montana Supreme Court. The clerk indicated that the Notice had not been filed and, accordingly, the Montana Supreme Court still had Ms. Tranel as the counsel of record. Our co-counsel, Karl J. Englund, called the clerk's office on June 7, 2010 and was informed that no Notice had been filed as of that date.
8. Because Mr. Casey still had not filed an Opening Brief by June, I attempted to call Ms. Tranel on June 7, 2010 in compliance with Rule 16(1) of the Montana Rules of Appellate Procedure to let her know I would be moving to dismiss Mr. Casey's appeal and to determine her position on this Motion.

9. Counsel was unavailable. I left a voice mail message stating that I would be filing a Motion to Dismiss Mr. Casey's appeal. I have not received a call back.
10. Further affiant sayeth naught.

Dated this 9 day of June, 2010.


ALICE CHIH-MEI CHEN

SUBSCRIBED AND SWORN TO before me this ____ day of June, 2010.

PLEASE SEE ATTACHED JURAT

(NOTARY SEAL)

Notary Public for the State of California

Residing _____

My commission expires _____

CALIFORNIA JURAT WITH AFFIANT STATEMENT

- ☐ See Attached Document (Notary to cross out lines 1–6 below)
☐ See Statement Below (Lines 1–5 to be completed only by document signer[s], *not* Notary)

1 _____
2 _____
3 _____
4 _____
5 _____
6 _____

Signature of Document Signer No. 1 _____ Signature of Document Signer No. 2 (if any) _____

State of California

County of Los Angeles

Subscribed and sworn to (or affirmed) before me

on this 9th day of June, 2010,
by Date Month Year

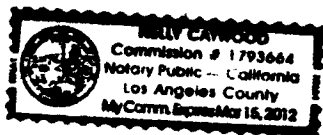
(1) Alice Chih-Mei Chen,
Name of Signer

proved to me on the basis of satisfactory evidence
to be the person who appeared before me (.) (,)
(and

(2) _____,
Name of Signer

proved to me on the basis of satisfactory evidence
to be the person who appeared before me.)

Signature Nelly Caywood
Signature of Notary Public



Place Notary Seal and/or Stamp Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Further Description of Any Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

RIGHT THUMBPRINT
OF SIGNER #1
Top of thumb here

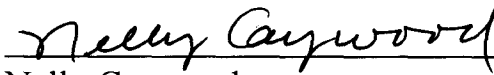
RIGHT THUMBPRINT
OF SIGNER #2
Top of thumb here

CERTIFICATE OF SERVICE

I hereby certify that the herein AFFIDAVIT OF ALICE CHIH-MEI CHEN was duly served upon the following by: ☒ U.S. First Class Mail; ☐ Express Mail (or overnight service); ☐ Hand Delivery; or ☐ Facsimile Transmission:

Monica Trannel
LUXAN & MURFITT, PLLP
Fourth Floor, Montana Club Building
P.O. Box 1144
Helena, MT 59624

Dated this 9th day of June, 2010


Nelly Caywood